

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EDWARD DAVIS,

Defendant.

8:15CR247

ORDER

This matter is before the Court on the Notice of Appeal, ECF No. 196, filed by Defendant Edward Davis, and the Memorandum, ECF No. 198, filed by the Clerk. The Clerk's Memorandum states the "clerk's office cannot process the appeal to the Eighth Circuit until one or more issues are resolved.^[1]" ECF No. 198. The Memorandum then asks the Court to determine whether Defendant is entitled to proceed on appeal in forma pauperis.

When the Court ruled on the Motion under 28 U.S.C. § 2255, it also denied a certificate of appealability. Mem. and Order at 3-4, ECF No. 194, Page ID 616; Judgment, ECF No. 195; *see also* Rule 11 of the *Rules Governing Section 2254 and 2255 Cases in the United States District Courts* ("The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."). Rather than seeking a certificate of appealability from the Eighth Circuit Court of Appeals, Defendant filed with this Court a Notice of Appeal, ECF No. 196, request for certificate of appealability, ECF No. 197, and Motion for Leave to Appeal in Forma Pauperis, ECF No. 199. For the reasons stated in the Court's Memorandum and Order, ECF No. 194, this Court will not issue a certificate of appealability. Defendant may seek a certificate of appealability from

the Court of Appeals. Defendant “cannot take an appeal unless a circuit justice or a circuit . . . judge issues a certificate of appealability under 28 U.S.C. § 2253(c).” Fed. R. App. P. 22(b)(1). Accordingly,

IT IS ORDERED:

1. The Clerk is directed to forward the Notice of Appeal, ECF No. 196, and the request for a certificate of appealability, ECF No. 197, and the other materials required by Federal Rule of Appellate Procedure 22(b)(1) to the Eighth Circuit Court of Appeals;
2. The Motion for Leave to Appeal in Forma Pauperis, ECF No. 199, is denied;
and
3. If the Court of Appeals grants the Petitioner’s request for a certificate of appealability, the Petitioner is permitted to proceed on appeal in forma pauperis under Federal Rule of Appellate Procedure 24(a)(3).

Dated this 25th day of March, 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge